IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1151 of 2007
Date of Decision : 05.07.2007

Baldev Singh .....Appellant

versus

Kulwant Singh & others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Harsh Bunger and Mr.Pardeep Solath, Advocates for the appellant.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration that the plaintiff is the owner of the land in dispute to the 1/4th share, was dismissed.

Bhagat Singh, father of the plaintiff, was owner of the land measuring 148 kanals. A consent decree was passed in favour of the plaintiff and his three brothers in the year 1982 in respect of the land measuring 109 kanals 15 marlas. The appellant has sought such consent decree on the basis of family settlement of the ancestral property.

The claim of the appellant is that the remaining land measuring 38 kanals 5 marlas was not partitioned, therefore, it continues to be ancestral property and, therefore, the lease of 99 years, created by Bhagat

Singh in favour of brothers of the plaintiffs, is null and void and it amounts to alienation of the ancestral property.

The property was partitioned being ancestral property and such partition was recognized by virtue of the consent decree dated 11.11.1982. Vide the aforesaid decree, four sons of Bhagat Singh became owners of the land measuring 109 kanals 15 marlas and the remaining property remained with Bhagat Singh which cannot be said to be ancestral property as the said land would be deemed to be fallen into his share through partition proceedings. Thus, Bhagat Singh is competent to lease out the same for a period of 99 years. Therefore, the findings recorded by the Courts below that the land in dispute measuring 38 kanals 5 marlas cannot be said to be ancestral property, cannot be said to be suffering from any patent illegality or irregularity which may give rise to any substantial question of law.

Learned counsel for the appellant has raised another argument that the appellant is entitled to mesne profits in respect of his share of the land i.e. 1/4th of the estate of Bhagat Singh as natural succession, even if the lease in favour of his brothers is valid. It is argued that after the death of his father, he has become the owner of the land in dispute alongwith his brothers though there is lease of 99 years in favour of his other brothers.

However, I do not find any substance in the said argument. No doubt, issue No.3 was framed to the effect, whether the plaintiff is entitled for possession of the suit land to the extent of 1/4th share and mesne profit arising thereon, but no argument was raised before the learned trial Court or before the learned First Appellate Court in this respect. In the memorandum of first appeal, though the appellant has averred that the findings on Issue Nos.1 and 3 are wrong, but it is not found thus. Para No.3 of the

memorandum of appeal relates to ancestral nature of the property. Therefore, the appellant cannot be allowed to raise such argument first time in second appeal.

Both the Courts below have recorded a concurrent finding of fact in respect of nature of land, therefore, I do not find that any substantial question of law arises for the consideration of this Court in second Appeal. Consequently, the present appeal stands dismissed.

05-07-2007 (HEMANT GUPTA)
*mohinder JUDGE